

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-560 038.

Dated:- 30 MAR 1994

APPLICATION NUMBER: Review Application No.1/94 in OA.No.632/93.

APPLICANTS:

RESPONDENTS:

To. Sri.S.B.Durgai v/s. Assistant Engineer, Trunks, Deptt. of Telecom,
Belgaum and Other.

1. Sri.A.R.Holla, Advocate,
No.3, IInd Floor,
Sujatha Complex,
First Cross, Gandhinagar,
Bangalore-9.
2. The Chief General Manager,
Karnataka Telecom Circle,
No.1, Old Madras Road,
Ulsoor, Bangalore-8.
3. Sri.M.Vasudeva Rao, Addl.CGSC,
High Court Bldg, Bangalore-1.

Subject:- Forwarding of copies of the Orders passed by the
Central administrative Tribunal, Bangalore.

Please find enclosed herewith a copy of the ORDER/
STAY ORDER/INTERIM ORDER/, passed by this Tribunal in the above
mentioned application(s) on 22nd March, 1994.

Issued
30/3/94
R.

o/c

S. Shanmugam
for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: :BANGALORE

REVIEW APPLICATION NO.1/94

IN

ORIGINAL APPLICATION NO.632/93

TUESDAY, THE TWENTY SECOND DAY OF MARCH, 1994

Shri V.Ramakrishnan, Member (A)

Shri A.N.Vujjanaradhya, Member (J)

S.B.Durgai,
S/o Late P.B.Durgai,
Dormitory Attendant,
CTX, Belgaum
(now dismissed from Service)
residing at
H.No.4732/1, Chavat Galli
Belgaum

....Applicant

Advocate by Shri A.R.Holla.

Versus

1. Assistant Engineer, Trunks,
Department of Telecommunications,
Belgaum-590 001.
2. Divisional Engineer,
Maintenance (Urban),
Department of Telecommunication,
Belgaum-590 001.

...Respondents

Advocate by Shri M.Vasudeva Rao, C.G.S.C.

O R D E R

Shri V.Ramakrishnan, Member (A)

....2/-

We have heard Shri A.R.Holla, the learned counsel for the applicant and Shri M.Vasudeva Rao, the learned standing counsel. Shri Holla justifies his prayer for a review of our judgment dated 19th November, 1993 on the following grounds:-

- (1) He refers to para six of the judgment which reads as follows:

"The earlier absence of the applicant during the period from 8.9.1988 to 18.9.1988 was referred in the article of charges only to point out that he was already punished for the said violation and was proceeded against under Rule 14 of CCS (CCA) Rules and he was not charged for this period in the present inquiry. Therefore, the contention of the learned counsel for the applicant that the applicant was proceeded against once again for the earlier period is incorrect and cannot be upheld.

Shri Holla draws our attention to the order of the Appellate Authority dated 24th July, 1992, where there is a reference to periods of unauthorised absence of the applicant on different occasions and periods and the warning issued/penalty inflicted for such absence and an observation "From the above it is crystal clear that Shri S.B.Durgai is in the habit of remaining absent unauthorisedly and showed no signs of improvement." Shri Holla submits that the charge against the applicant is only for unauthorised absence and not for habitual absence and that he is now being punished again for the earlier periods of unauthorised absence. Shri Holla submits that our observation in para of the judgment is, therefore, an error apparent on the face of the record.

- (2) Shri Holla also refers to para 9 of the judgement, which mentions that the applicant had applied for grant of leave for the period from 9.4.90 to 10.6.90 only on 12.6.90 and that he had not applied for leave for the period from 10.6.90 to 15.9.90. Shri Holla refers to the applicant's appeal dated 19.11.91 (ink page 31 as at Annexure A9 of the O.A.), where it is mentioned that ~~he~~ requested the Inquiry Officer to record his statement to the effect that "I have produced MC and SR1 for 5 days w.e.f. 30.12.1989 and for 63 days w.e.f. 9.4.90 till 10.6.90 and applied further extension of sick leave." In view of this our conclusion that he had not applied for leave for the period after 10.6.90 is, according to Shri Holla, an error apparant on the face of the record.
- (3) Shri Holla also draws our attention to the inquiry report as at Annexure A6 to the OA (ink page 20 of OA), where there is a mention that the inquiry officer read out the charge sheet with its Annexures I and II i.e. article of charge and statement of imputations. Shri Holla contends that this was false, as ~~in the~~ in the proceedings, as at Annexure A5, ink page 17 in the OA, it was mentioned that the Inquiry Officer read out the charge sheet. There is no mention in the proceedings that the statement of imputation was also read out. Shri Holla further submits that it is clear from the inquiry report that the inquiry officer had taken note of the entries in the

Service Book and office records of the applicant had come to the conclusion that applicant was in the habit of remaining absent unauthorisedly. Shri Holla contends that reliance of such material behind the back of the applicant had vitiated the proceedings. He relies on some Court Judgment in this regard. He further argues that this aspect was also not referred to in our judgment, even though he had urged the same during the argument. According to Shri Holla all these factors merits favourable consideration of the Review Application.

2. We have carefully considered the submissions of Shri Holla. In para 6 of our judgment, we had observed that the applicant was not proceeded against once again for the earlier charge. This is factually the correct position, because the article of charge submitted to the applicant charged him for his unauthorised absence for "five days from 30.12.1989 to 03.01.1990 and from 9.4.90 to till date." He was not charged for the unauthorised absence from 8.9.88 to 18.9.88 for which he was earlier proceeded against and found guilty and punished. The fact that the Appellate Authority had taken note of his previous record, which was very well known to the applicant, would not support the contention that the applicant was charged and punished again for an offence for which he was earlier proceeded against. As regards the second contention that he had in fact applied for grant of leave after the period 10.6.90 to 19.9.90, we are not able to agree with the submission of Shri Holla that a

mere reference to that effect by him in the appeal that he had applied for extension of sick leave beyond 10.6.90 would in the absence of any other material whatsoever substantiate his contention that the applicant had sought in ^{line} ~~turn~~ for regularisation of his ^{absence} ~~leave~~. Shri Holla's ^{or} contention that the inquiry was vitiated on account of the inquiry authority allegedly relying on material behind the back of the applicant does not also merit any serious consideration. The inquiry officer had come to a definite conclusion with regard to the issues of which the applicant was charged and had held them to be proved. It is very clear from the inquiry report that this conclusion would have in no way been altered even if he had not referred to the service records of the applicant. In fact what the inquiry officer had referred to was well known to the applicant and it was not behind his back. Also it is not in dispute that the applicant was duly supplied with the article of charges along with the statement of imputations and he cannot claim lack of knowledge of statement of imputations.

3. In the light of the foregoing, we find that there is no error apparent on the face of record in respect of our judgment. If the applicant is aggrieved by our order, he cannot seek to get the same reversed by way of a Review Application. We, therefore, dismiss the application.

sd-
22/12/94
(A.N.VUJJANARADHYA)
MEMBER (J)

TRUE COPY

sd-
22/12/94
(V.RAMAKRISHNAN)
MEMBER (A)

G. S. Narayan
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE